

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of ACS of Anchorage, Inc., for)	
Forbearance from Certain Dominant Carrier)	
Regulation of its Interstate Access Services)	WC Docket No. 06-109
And for Forbearance from Title II)	
Regulation of its Broadband Services in the)	
Anchorage, Alaska, Incumbent Local)	
Exchange Carrier Study Area)	

**REPLY COMMENTS OF BROADVIEW NETWORKS,
COVAD COMMUNICATIONS, ESCHELON TELECOM, INC.,
NUVOX COMMUNICATIONS, XO COMMUNICATIONS,
XSPEDIUS MANAGEMENT COMPANY LLC, AND
YIPES ENTERPRISE SERVICES, INC.**

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COVAD COMMUNICATIONS
ESCHELON TELECOM, INC.
NUVOX COMMUNICATIONS
XO COMMUNICATIONS, INC.
XSPEDIUS COMMUNICATIONS AND
YIPES ENTERPRISE SERVICES, INC.**

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Broadview Networks, Covad Communications, Eschelon Telecom, Inc., NuVox Communications, XO Communications, Inc., Xspedius Management Company LLC , and Yipes Enterprise Services, Inc. (collectively, the “CLEC Group Commenters”), through their undersigned attorneys, submit these reply comments in the above-referenced docket. On May 22, 2006, ACS of Anchorage, Inc. (“ACS”) filed a Petition with the Federal Communications Commission (the “Commission”) seeking forbearance from, among other things, numerous common carrier obligations under Title II of the Communications Act of 1934,¹ as amended (the “Act”), throughout the Anchorage study area when it provides broadband services. Two sets of initial comments were filed on August 11, 2006, both in opposition: Comments by General Communication, Inc. (“GCI”) and a joint Opposition filed by Time Warner Telecom, Inc., Cbeyond Communications, LLC, and One Communications Corp. (collectively, “Time Warner

¹ 47 U.S.C. §§ 201 *et seq.*

et al.”).² For the reasons set forth herein, the CLEC Group Commenters join GCI and Time Warner *et al.* in urging that ACS’s request for forbearance relief related to broadband services should be denied in its entirety.³

I. INTRODUCTION AND SUMMARY

The ACS Petition, as it pertains to broadband services, is in many ways similar to the forbearance petitions filed by AT&T, BellSouth, Embarq, Qwest, and Verizon (collectively, the “ILEC Petitioners”) in WC Dockets Nos. 04-440, 06-125, and 06-147.⁴ Each of these carriers, to one degree or another, seeks wide-ranging and paradigm-shifting forbearance from enforcement of Title II obligations and Commission regulations governing their provision of broadband services.⁵ Although each of these petitions should be denied for the reasons set forth in the Comments and Reply Comments in which the CLEC Group Commenters took part,⁶

² Comments of General Communication, Inc., WC Docket 06-109 (filed August 11, 2006) (“Comments of GCI”); Opposition of Time Warner Telecom, Inc., *et al.*, WC Docket 06-109 (filed August 11, 2006) (“Time Warner *et al.* Opposition”).

³ Except as set forth briefly in note 31, below, the CLEC Group Commenters focus their comments on ACS’s request for forbearance with respect to retail and wholesale *broadband* services.

⁴ *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services* (filed June 13, 2006); *Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services* (filed Jul. 13, 2006); *Petition of BellSouth Corporation for Forbearance Under 47 U.S.C. § 160(c) from Title II and the Computer Inquiry Rules with Respect to its Broadband Services* (filed Jul. 20, 2006); *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common Carriage Requirements* (filed Jul. 26, 2006), WC Docket No. 06-125 (consolidated); *Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 04-440 (filed Dec. 20, 2004)

⁵ The CLEC Group Commenters concur in the arguments of GCI and Time Warner *et al.* that ACS has not defined the relief it seeks with sufficient precision. However, because the CLEC Group Commenters believe that no section 10 relief is warranted with respect to any broadband services at this time in the Anchorage study area, they will refrain from reiterating or amplifying any arguments regarding that issue.

⁶ Comments in Opposition of Broadview Networks, Covad Communications, CTC Communications, Inc., Eschelon Telecom, Inc., NuVox Communications, XO

unlike these *other* petitions, ACS's Petition at least makes a foray to present supporting market data, concentrating on the Anchorage area, for the relief it requests. ACS, unlike the ILEC Petitioners, recognizes at least that a market analysis is required before forbearance from Title II can be granted.⁷ Yet, like the ILEC Petitioners, ACS fails to satisfy the statutory criteria in section 10 of the Act.

Indeed, despite the semantic trappings of the ACS Petition, it provides no more of a market analysis than do the ILEC Petitioners. The case ACS presents on its own behalf does not demonstrate sufficient competition and fails to overcome the hurdles necessary to justify forbearance relief, even to the limited geographic extent on which it focuses. The comments filed in opposition to the ACS Petition detail the principal reasons why the Commission should find that the criteria for forbearance under section 10 of the Act have not been met, and the CLEC Group Commenters generally second the positions taken in those comments.

While ACS recognizes that demonstrating robust competition is the most effective means of showing that section 10(a) of the Act is satisfied, ACS falls tremendously short of making such a case, especially in the markets for broadband services.⁸ Of greatest importance,

Communications, Inc., and Xspedius Management Company LLC, filed in WC Dockets Nos. 04-440, 06-125, and 06-147 (August 17, 2006) ("Comments of Broadview *et al.*"); Reply Comments of Broadview Networks, Covad Communications, CTC Communications, Inc., Eschelon Telecom, Inc., NuVox Communications, XO Communications, Inc., Xspedius Management Company LLC, and Yipes Enterprise Services, Inc., filed in WC Dockets Nos. 04-440, 06-125, and 06-147 (August 31, 2006) ("Reply Comments of Broadview *et al.*"). The CLEC Group Commenters incorporate the arguments made in the Comments of Broadview *et al.* and Reply Comments of Broadview *et al.* herein by reference thereto to the extent that ACS relies in part upon the Petitions of AT&T, BellSouth, Embarq, Qwest, or Verizon in support of its Petition in this docket. See Comments of ACS, filed in WC Docket Nos. 06-109, 06-125, and 06-147 (August 17, 2006) at 2-3. Copies of the Comments of Broadview *et al.* and the Reply Comments of Broadview *et al.* are appended hereto.

⁷ ACS Petition at 9.

⁸ As GCI notes, ACS lumps together, respectively, all switched access and broadband services into mass market and enterprise markets, without making any effort to further distinguish among product (or geographic) markets, contrary to distinctions made

ACS relies heavily on the presence of *retail* competition in support of a request for relief for forbearance in both the wholesale and retail markets. The Commission should not be so easily misled, as any current retail competition in Anchorage exists at the mercy of regulatory requirements that ensure that competitors have access to *wholesale* inputs that currently only ACS can make available in the vast majority of locations throughout Anchorage. In the case of broadband services (no less than in the case of many traditional telecommunications services), the most critical inputs which ACS continues to control are high capacity fiber loops to business customers. Unless and until there is true facilities-based competition in the provision of these wholesale inputs, the case for forbearance of the sort requested by ACS must fail, just as it should for the ILEC Petitioners, in the *wholesale* markets *and* interdependent *retail* markets.⁹

As amplified herein, ACS's dominance over the transmission facilities needed to provide end users competitive broadband services is unquestionable. Forbearance is unjustified at this time as facilities-based alternatives remain excessively costly and are highly unlikely to emerge in a timely fashion due to a variety of factors which the Commission has recognized, including not only cost but rights of way issues, physical obstacles, and the need to secure permission from the building owner for access to the customer. There is no evidence the facilities of ACS's leading competitor, GCI, or those of other intermodal competitors, available today in the Anchorage study area can adequately support broadband services, let alone are configured to offer wholesale services. Finally, even if GCI were capable of providing

through its own marketing efforts. GCI Comments at 7-8. As explained in the Comments of Broadview *et al.* (at 20-22), section 10 requires a more granular approach to defining product markets.

⁹ As Time Warner *et al.* note, Commission precedent teaches that an analysis of market dominance in the retail markets must examine the extent to which the subject carrier dominates the market for the underlying facilities upon which its competitor's depend to provide their retail services. See Time Warner *et al.* Opposition at 7, citing *Review of*

competitive wholesale services, this would only ensure a duopoly within the Anchorage study area, which the Supreme Court and the Commission have made clear is not sufficient to ensure effective competition. The case for forbearance under section 10 concerning ACS's provision of broadband services has not been made.

II. THERE IS LITTLE DOUBT THAT WHATEVER LEVEL OF RETAIL COMPETITION EXISTS IN ANCHORAGE TODAY IS THE RESULT OF ACS-PROVIDED WHOLESALE INPUTS SUBJECT TO TITLE II REGULATION

As Congress recognized when it passed the Telecommunications Act of 1996 (the "1996 Act") and the Commission has repeatedly recognized when implementing the 1996 Act through regulations, the critical element for the growth of competition to end users is the ability of competitors to reach end users in an economically viable fashion.¹⁰ The Comments of GCI make it abundantly clear in the case of broadband services, especially those provided to business customers, that ACS continues to dominate the market in Anchorage because it controls the access to end users. Just as the ILEC Petitioners incorrectly treat the broadband market as a single monolithic nationwide market for purposes of their forbearance petitions,¹¹ ACS

Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Notice of Proposed Rulemaking, 16 FCC Rcd 22745, ¶ 17 (2001).

¹⁰ See, e.g., 47 U.S.C. § 251(c)(3) (requiring ILEC unbundling of network elements at cost-based prices); 47 U.S.C. § 271 (c)(2)(B)(iv) (requiring RBOC unbundling of local loop facilities to customer premises as a pre-condition to in-region long distance authority); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, 15 FCC Rcd. 18354, ¶205 (2000) ("Access to unbundled loops will also encourage competition to provide broadband services"; "Congress intended for competitors to have these options available"); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978, ¶¶ 205-207 (2003) ("Triennial Review Order") *vacated and remanded in part, affirmed in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) *cert. denied*, 125 S.Ct. 313, 316, 345 (2004). (loop construction is costly and time consuming and the decision to deploy a loop is largely driven by the ability to recover the costs from the individual customer)

¹¹ See Comments of Broadview *et al.* at 22-28.

mistakenly treats the market in Anchorage as one geographic market. But the Comments of GCI make clear that, for the vast majority of business end users, only ACS has facilities to reach the end user and provide service.¹² The availability of alternatives varies wildly from building to building, and thus from customer to customer, rendering it unwise to consider more than the individual customer to be the geographic market.¹³ Otherwise, as GCI correctly notes, if a larger geographic market is used, and forbearance relief is granted on that geographic scope, customers within that market that are capable of being served only by ACS on a facilities basis may be vulnerable to ACS's market power. In those cases, any competitor must obtain critical wholesale inputs from ACS if it is to provide retail services; if it is to compete, those wholesale inputs must be available on just, reasonable, and nondiscriminatory prices, terms, and conditions, or retail competition simply will not have the chance to emerge.¹⁴ In the absence of wholesale facilities-based competition in the provision of such inputs, both the availability of wholesale inputs to ACS's competitors and any level of sustainable retail competition wholly depend today upon Title II regulation.¹⁵

¹² Comments of GCI at 9.

¹³ Although the Commission might be tempted to treat individual buildings as the smallest geographic market worth considering, as explained below, the ability of building owners to restrict carriers to certain floors of a building (or even certain premises on a given floor) renders it inappropriate even to use individual buildings as the size of the market.

¹⁴ Although the ACS petition claims that relief is not sought for wholesale rates, the Petition as a whole belies this suggestion, especially the appended list of regulations for which forbearance is sought. GCI also argues convincingly that the distinction between wholesale and retail services is not sufficiently clear to allow such easy distinctions. *See* Comments of GCI at 4-5. Moreover, as explained herein, robustly competitive *retail* markets can only exist if the related *wholesale markets* have sufficient competition. Accordingly, absent a demonstration of *wholesale* competition sufficient to justify forbearance, there is an inadequate foundation for granting forbearance in the retail markets as well.

¹⁵ The CLEC Group Commenters wholeheartedly agree with GCI that the Commission cannot grant forbearance relief to ACS in the provision of unbundled network elements ("UNEs") if it intends to grant forbearance relief to any retail services that can be provided competitively using UNEs or other ACS-provided special access services. *See* Comments of GCI at 13.

There is no evidence in the record that the Commission can use to assume that market conditions are such that facilities-based competitors, independent of CGI, are likely to emerge in a timely fashion to exert competitive pressure on ACS in its provision of wholesale inputs to the broadband markets. The CLEC Group Commenters support the Comments of GCI and Time Warner Telecom *et al.* which make clear that high hurdles stand in the way of such competitive deployment.¹⁶ AT&T's submissions and presentations to the Commission in the *Triennial Review* proceedings demonstrated that facilities-based entry or expansion of facilities by competitive LECs will not be timely, likely, or sufficient because the prohibitive costs of such entry or expansion.¹⁷ The Commission itself has recognized that competitors seeking to construct local transmission facilities face "steep economic barriers."¹⁸

The Commission should not assume that GCI, even where it has fiber backbone facilities in the vicinity of a building, can easily serve end users in the building. As an initial matter, competitors will typically only build in to a particular building *after* they have secured a customer promising sufficient revenues to justify the build, whether that customer be wholesale or retail.¹⁹ Further, proximity of a point on a company's fiber network to a building is no

¹⁶ Comments of GCI at 9-10; of Time Warner *et al.* Opposition at 7, 8-10.

¹⁷ "AT&T Presentation to the FCC Comparing incumbent LEC and competitive LEC Network Architectures," October 3, 2002, filed in CC Docket 01-338; "Transport UNEs Are a Prerequisite for the Development of Facilities-Based Local Competition." AT&T Presentation, dated October 7, 2002, filed in CC Docket 01-338 on October 8, 2002; Letter from Joan Marsh, Director, Federal Government Affairs, AT&T, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, November 25, 2002, filed in CC Dockets 01-338, 96-98 and 98-147; Reply Declaration of Anthony Fea on Behalf of AT&T Corp., October 18, 2004, filed in WC Docket 04-313 and CC Docket 01-338. It should be noted that MCI made similar filings in the Triennial Review proceedings. *See, for instance*, MCI's Comments and Reply Comments in WC Docket No. 04-313, October 4 and 19, 2004 respectively.

¹⁸ *Triennial Review Order*, ¶ 199.

¹⁹ Declaration of Wil Tirado on behalf of XO Communications, Inc. attached to Letter from Thomas Cohen, Kelley Drye & Warren LLP, to Marlene Dortch, Secretary, Federal

guarantee that constructing a lateral to that building will be economical. The former AT&T repudiated such a simple approach to assessing competitive conditions:

[T]he mere fact that a customer may be only a certain number of feet from a competitive carrier's nearest network access point does not permit a simple cost per foot assumption about what the cost of deploying a transmission facility would be.²⁰

AT&T explained that other factors – such as municipal and private rights of way, physical obstacles, and the need to secure permission from the landlord for building access – are frequently dispositive in a competitor's decision-making process when it considers extending its network to a particular building.²¹ In addition, while the network fiber might pass close to a particular building, the actual closest point of access on the network for tying in a lateral build to the building may be hundreds of feet father away.²²

As noted above, before a telecommunications carrier can serve an end user customer, it must have access to the end user's premises. Where the end user is a tenant, as in many business customer situations, the carrier must secure access to the premises from the building owner, which has no legal obligation to provide such access.²³ Not only is this a hurdle

Communications Commission, filed in WC Docket No. 05-65 and WC Docket No. 05-75 (October 21, 2005) ¶¶ 13, 20 (“Tirado Declaration”).

²⁰ Declaration of Anthony Fea and Anthony Giovannucci appended to Comments filed on behalf of AT&T Corp, in WC Docket No. 04-313 (filed October 4, 2004) at ¶ 41.

²¹ *Id.* The Commission has reached the same conclusion:

In addition to delays associated with gaining access to rights-of-way and permits from local or municipal authorities, competitive LECs face additional barriers with regard to serving multiunit premises due to difficulties sometimes outright prohibitions in gaining building access. ... [I]f the entity or individual controlling access to the premises does not allow a competitor to reach its customer residing therein (or places unreasonable burdens on the competitive LEC as a condition of entry) the competitive LEC may be unable to serve its customers via its own facilities ... *Triennial Review Order*, ¶ 305.

²² *See also Tirado Declaration*, ¶¶ 16-17 (despite the fact that fiber rings pass near many commercial buildings, the average lateral building is 500 feet).

²³ *Promotion of Competitive Networks in Local Telecommunications Markets*, Further Notice of Proposed Rulemaking, 15 FCC Rcd 22983, ¶126 (2000)(discussing concerns that “the ability of premises owners to unilaterally and unreasonably discriminate among

for a carrier seeking to build a lateral to the building for the first time, this is also a potential obstacle for a carrier that already has access to a building, but where that access is limited to only one or a small number of the tenants. If a potential customer of the carrier, or a potential customer of the carrier's *wholesale* customer, wants to provide service to a tenant in that same building, there is no guarantee that the carrier will be able to negotiate access to that end user's premises. Whether successful or not, the effort to obtain that access will raise the carrier's costs. Where the customer has multiple locations, the would-be facilities-based *wholesale* or *retail* competitor would have to be able to access the premises in *each of the buildings*, a requirement that simply magnifies the problem of securing building access in the case of such customers.

Further, even in those locations where GCI, or another competitor, has facilities by which it can overcome these issues and reach an end user in competition with ACS, those facilities must be capable of supporting the services in question. This has two components. First, the competitor must be able to provide facilities that would allow effective retail competition from a technical perspective. GCI makes a compelling case why, today, it effectively cannot serve a substantial number of business customers, even where it does have cable facilities, because of lack of bandwidth capacity or the simple technological inability to provide business broadband services over cable-based technology.²⁴ As GCI notes, "the industry is only now *beginning* to present solutions to these technical barriers."²⁵

Second, even if GCI were to have facilities in place and be able technologically to compete on a retail basis with ACS using those facilities, there exists the separate, but equally important question of whether GCI is capable of providing competitive *wholesale* services at

competing telecommunications service providers remains an obstacle to competition and consumer choice.")

²⁴ Comments of GCI at 9-10, 14-17. *See also* Time Warner *et al.* Opposition at 17-18.

such locations. The provision of wholesale services is a very different business from retail and some competitive networks are simply not technically equipped for wholesale services.²⁶ Even if a competitor with retail customers has an existing network technically capable of providing wholesale services, that competitor would be required to “incur additional fixed investments in multiplexing equipment and OSS systems, and invest in marketing, customer support and product development” in order to provide wholesale services.²⁷ For example, while a retail competitor may have end user loop facilities that serve a building, the competitor’s network may not have equipment in the building that would allow it to provide access on a wholesale basis to a third-party wishing to lease the competitor’s facilities to reach the end user. The competitively deployed facilities may connect directly to the competitor’s backbone, and may not be sized and configured to support wholesale services.²⁸

Significantly, with its focus on competition in the retails markets, ACS does not contend that GCI is providing, or is equipped to offer, wholesale services on any scale that would support competitive retail broadband services. At most, ACS noted that most end users in the Anchorage study area have a choice between ACS and GCI for retail broadband, but advances this assertion *not* to support a claim that there is wholesale competition, but rather for the very limited purpose of suggesting that these *retail* broadband connections offer a source of competition for mass market retail switched telephone service, namely voice over IP.²⁹ GCI, in

²⁵ *Id.* at 14.

²⁶ See AT&T White Paper “Record Evidence That Satisfies USTA II on Contested Points,” at 2-3, attached to Letter from Joan Marsh, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, dated November 30, 2004, and filed in CC Docket No. 01-338 and WC Docket No. 04-313. (“AT&T White Paper”).

²⁷ *Id.* at 3.

²⁸ See *id.* at 3 nn. 6 & 7.

²⁹ ACS Petition at 26. ACS also cites the presence of other much smaller wireless and cable providers in parts of Anchorage to support a claim that they provide sources of

its comments, does not suggest that it is providing or is configured to provide competitive wholesale services where it has facilities, if anywhere within the study area, that are capable of providing wholesale services. In short, there is a complete absence of evidence that there is any wholesale competition in Anchorage to support ACS's claim for forbearance relief with respect to broadband services.

Assuming *arguendo* that GCI were a viable competitor in Anchorage in the provision of wholesale inputs supporting competitive broadband services – which the Commission cannot conclude it is today based on the record in this proceeding – the presence of merely one other facilities-based competitor in addition to ACS would not satisfy the level of competition needed to meet the section 10 forbearance criteria. The courts and the Commission have held on numerous occasions that a duopoly does not ensure effective competition.³⁰ In the context of a section 10 request for the Commission to forbear from applying the most basic of common carrier obligations, there is even less rationale for the Commission to be satisfied with only two competitors. Where the “second competitor” in the provision of wholesale inputs to support competitive broadband services is merely a potential competitor, as here in the case of

competition for traditional switched services. *Id.* at 26-28. ACS does not claim any of these companies do or can compete in wholesale broadband markets or retail business broadband markets..

³⁰ See, e.g., *Verizon Communications Inc. v. Law offices of Curtis V. Trinko*, 124 S.Ct. 872 (2004). (duopolies presumptively violate antitrust standards and cannot be considered consistent with the objectives of the Communications Act of 1934, as amended, which is designed to foster competition that exceed antitrust requirements); *Echostar Merger Order*, 17 FCC Rcd. 20559, ¶ 103 (2002) (mergers to duopoly face “a strong presumption of illegality”); *Media Ownership Order*, 18 FCC Rcd 13620, ¶ 289 & n. 612 (2003)(within the economic literature, “five or more relatively equal sized firms” are needed to demonstrate a “structurally competitive market”).

GCI which relies heavily today on ACS facilities, there can be no doubt that competition has not evolved to the point of justifying forbearance from enforcing Title II against ACS.³¹

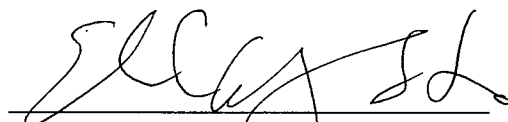
³¹ GCI notes that it does not oppose ACS's Petition to the extent the incumbent requests forbearance from rate-of-return and rate structure regulation for *retail or wholesale switched services* subject to certain conditions. Comments of GCI at 21-29. The CLEC Group Commenters take no position on this particular issue in the Anchorage study area in these Reply Comments, except as noted below, and each reserves the right to contest any grant of, or request for, forbearance against enforcing Title II against any provider of retail or wholesale switched services. The CLEC Group Commenters wish to emphasize however that whether forbearance for such services is appropriate, and any conditions attached thereto, is a market-specific determination that can only be addressed on an adequate factual record. Without limiting the scope of the foregoing reservation, the CLEC Group Commenters agree with GCI that the Commission, in WC Docket No. 05-281, must deny the pending request for forbearance relating to ACS's section 251(c)(3) unbundling obligations to the extent, if any, the Commission grants here the request in this docket for relief from Title II obligations with respect to ACS's switched access services. As noted in the Comments and Reply Comments of NuVox, XO, and Xspedius in Docket No. 05-281, ACS's request for relief in that docket should be denied in any event. Conversely, the CLEC Group Commenters note that the continued availability of UNEs can only serve as a possible and partial justification for forbearance from regulatory obligations related to retail or wholesale switched access services. Further, as the Time Warner *et al.* Opposition (at 12-13) makes clear, UNEs are not particularly well-suited to the provision of broadband services, and thus their continued availability does not provide even a partial justification for forbearance related to broadband services. *See also* Reply Comments of Broadview *et al.*, WC Docket No. 06-125 *et al.* at 7-8. Moreover, UNEs are available only at the DS1 and DS3 levels and are not capable of supporting, under any reasonable scenario, OCn level broadband services.

III. CONCLUSION

In sum, although ACS superficially seems to provide more market-specific information in support of its Petition than did the ILEC Petitioners in their respective petitions for forbearance in the provision of Title II broadband services, in the end the record in this proceeding is as woefully deficient as it is in Dockets Nos. 04-440, 06-125, and 06-147. The Commission should deny the ACS Petition to the extent it seeks forbearance relief related to broadband *retail* or *wholesale* services.

Respectfully submitted,

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Dated: September 11, 2006

CERTIFICATE OF SERVICE

I, Courtenay P. Adams, hereby certify that a copy of the foregoing Reply Comments was delivered this 11th day of September 2006 to the following individuals by U.S. mail, postage prepaid and, where indicated, electronic mail or hand delivery:

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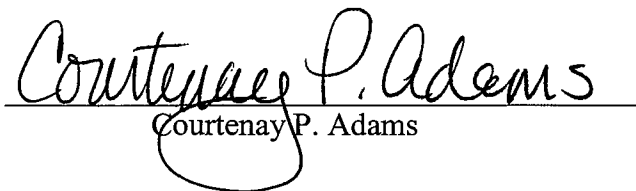
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